

given for encouraging export. ANSWERED,—I must have the benefit of the drawback; for, if there were a duty or imposition laid on them, (as once there was at exporting,) I, as proprietor, behoved to pay it; even so here, *a pari, qui sentit incommodum debet et habere commodum*.

The Lords found the drawback belonged to the vassal. Some proposed that it might be left to the superior's option, yearly, either to accept a barrel cured with Scots salt, without paying the drawback, or with foreign salt, deducing the drawback. But it was thought this alternative would be the seed of a yearly plea and contest; and therefore it was laid aside. The vassal's disadvantage was, that he had feued that land, mainly in contemplation of the fishing salmon at the mouth of the Tay and near Dundee; and it had much failed and decayed several years bygone. *Vol. II. Page 661.*

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1711. July 19. HELEONORA NICOLSON, Lady Greenock, *against* SIR JOHN SHAW of GREENOCK, her Son.

AN appeal was given in by Lady Greenock against Sir John Shaw, her son, against the Lords' interlocutor finding the contract passed betwixt her husband and her null and dissolved *ob causam datam causa non secuta*; because, though it bear she had fulfilled her part by giving a disposition of the lands of Carnock to her son, yet it was now come *in non causam*, being lying beside her cancelled, and that law presumed she had destroyed it, being in her custody, and bearing a clause dispensing with the not delivery; and never being ratified by her, unless she instructed another way. And repelled her offer of making it up, and giving a new disposition to take off her son's damage. *Vol. II. Page 663.*

[See Reports of this Case, by Forbes and Fountainhall, Dictionary, pages 8563 and 9166.]

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1711. July 19. TOWN of ABERDEEN *against* DR MIDDLETON and OTHERS, Masters of the College of Aberdeen.

THE TOWN of Aberdeen having purchased a part of the lands of Panton of Hilton at a roup, which holds of the College, they charge Doctor Middleton and other masters, to receive them, and offer a year's rent. They SUSPEND on this reason,—That they being a community, which never dies, if they entered them they should lose the casualties of superiority; such as non-entry, liferent escheat, duplication of the feu-duties which arise by the death, delinquency, or neglect of other private vassals; which is such a prejudice to superiors, that Stair, *tit. Infestments of Property, sec. 41*, from Craig, thinks a superior is not bound to receive a community for his vassal; and proposes a remedy,—that the corporation should name a trustee, by whose death or delinquency the casualties of the superiority should open; (and which Basnage, in his learned *Commentaries on the Customs of Normandy*, calls *un homme vivant et mourant*; and Craig, *lib.*